

(2) in this case the learned magistrate had failed to consider the defence evidence and therefore the conviction must be set aside.

Case referred to:—

(1) *Ee Choon Bok and others v. Public Prosecutor* [1951] M.L.J. 184.

MAGISTRATE'S CRIMINAL APPEAL.

C. T. Wong for the appellant.

Frederick Chai (Inspector) for the respondent.

Lee Hun Hoe J.C.: The appellant was charged and convicted by the District Court at Sibu for an offence under section 31 of the Minor Offences Ordinance (Cap. 56). He was convicted and sentenced to two months' imprisonment. He appealed against his conviction and sentence.

Section 31 of the said Ordinance apparently is meant to deal with a person who without permit or lawful authority goes armed with an offensive weapon. Certain classes of persons are exempted. An offensive weapon is defined in subsection (2) of section 31 of the said Ordinance as including any instrument which if used as a weapon of offence is likely to cause hurt.

Appellant, a painter, was found to have in his possession a scrapper, a pen-knife and some kind of metal pipe. The learned magistrate considered that the pen-knife and metal pipe were offensive weapons. But he was obviously of the opinion that the scrapper was a working tool and not an offensive weapon. I think he had in mind paragraph (c) of subsection (2) of section 31 of the said Ordinance which excludes any instrument carried by a person for the purposes of his trade or occupation and reasonably required for such purpose. Having decided that those instruments were offensive weapons he had to consider the further question whether or not appellant had lawful authority or he carried it for a lawful purpose or he had any reasonable excuse.

I do not think it is the intention of the legislature to make mere possession of an offensive weapon in a public place an offence. Possession in a public place can only become an offence when it is for otherwise than a lawful purpose. The prosecution conceded that such a pen-knife could be bought in the local shops. I do not think the law makes the possession of a pen-knife an offence *per se*. To hold otherwise would render liable to punishment most of the shopkeepers. No doubt a pen-knife or a metal pipe can be used as an offensive weapon, so, for that matter can a changkol and a bread knife, and a number of other agricultural and domestic implements. A certain degree of commonsense is necessary lest a law obviously enacted to deal with undesirable elements should become an oppression against the public generally.

I have perused the record and heard counsel

A for appellant and seen the alleged offensive weapons. In my view it is important in this case to consider all the evidence that appears in the record of this trial. The learned magistrate's judgment consists of only two short paragraphs which do not show what weight or value he had given to the evidence of appellant and of Yong Hieng Lee who corroborated appellant's story substantially. Yong Hieng Lee gave sworn evidence and his evidence was in no way shaken by cross-examination. It is important for an appellate court to know what view the learned magistrate took as regard the credibility of a particular witness. I agree with what Abbot J. said in *Ee Choon Bok and others v. Public Prosecutor* ⁽¹⁾:—

"This court is of opinion that no finding of fact ought to be upset except where it is clearly shown that the finding is unreasonable. In cases where the credibility of a witness is concerned it is, I consider, sufficient for it to be recorded in the grounds of decision that the witness was believed; it could then be for the appellant to show that such belief or disbelief, as the case may be, was unreasonable."

It is most important for this court to know what impression the learned magistrate had formed of a particular witness particularly when his evidence was not in any way shaken by cross-examination. Because if this evidence were to be believed there would be a reasonable doubt the benefit of which must be given to the appellant. To my mind after having read the record and without seeing and hearing the witnesses it is obviously a case where the evidence adduced by the defence would create a reasonable doubt.

In the circumstances I hold that the conviction should be set aside not so much that it was against the weight of the evidence but because the trial magistrate had failed to consider all the evidence that was before him particularly in the sense that he had failed to consider the defence evidence. Accordingly, I allow the appeal and quash the conviction and sentence.

Appeal allowed.

H PUBLIC PROSECUTOR v. WONG SIK CHUNG & ORS.

[R.Cr.J. (Lee Hun Hoe J.C.) September 8, 1964]

[Sibu — Criminal Revision No. CR/2 of 1964]

Criminal Procedure — Trial — Justice should not only be done but should manifestly and undoubtedly be seen to be done — Accused induced to plead guilty.

I *Gaming — Accused of playing "pai kow" — Magistrate convicting accused after compromise — Whether proper.*

The accused were charged with playing a prohibited game of "pai kow". It appeared that before the hearing the learned magistrate instructed the court clerk to tell the accused persons that if they pleaded guilty, the magistrate would impose a fine of \$5 on each accused

person and the money found would be returned to them. They accordingly pleaded guilty. They were fined \$5 each but the sum of \$2,589.05 found was ordered to be forfeited.

Held: it was irregular and improper for a magistrate to compromise with accused persons that if they pleaded guilty he would impose on each a small fine and that accordingly the conviction and sentence must be quashed.

Case referred to:—

- (1) *R. v. Sussex Justices, ex parte McCarthy* [1924] 1 K.B. 256.

CRIMINAL REVISION.

C. T. Wong for 10 accused.

Bobby Tan (A. S. P.) for the Public Prosecutor.

Lee Hun Hoe J.C.: As a result of certain information I came to have knowledge of the irregularity in the conduct of this case. The court clerk of the Sibü District Court was called and gave evidence.

On 25th July, 1964 thirty three accused persons were brought to the Sibü District Court to be charged for playing a prohibited game of "Pai Kow" under subsection (2) of section 1 of the Gambling Ordinance. Before the hearing the learned magistrate went to see the court clerk and instructed him to tell the accused persons who were then in the court that if they pleaded guilty he (the learned magistrate) would impose a fine of \$5.00 on each accused person and the money found would be returned to them. The court clerk then went into court and as all the accused persons understood Foochow he spoke to them in Foochow. He then returned to his office and informed the learned magistrate that the accused persons agreed to plead guilty. It would appear that Inspector Gines who was conducting the prosecution was not aware of the matter. The learned magistrate then went into court. The court clerk acted as an interpreter. The charge was read and explained to the accused persons and they pleaded guilty and each was fined \$5.00. Inspector Gines drew the learned magistrate's attention to certain provisions of the said Ordinance. Consequently the latter ordered the sum of \$2,589.05 to be forfeited to the Government. From this order ten of the accused persons appealed. Mr. Wong represented them. They have now withdrawn their appeal.

It is irregular and improper for a magistrate to compromise with accused persons that if they should plead guilty he would impose on each a small fine and return the money found. It is a dangerous course to adopt. Such conduct tends to shake the faith that is reposed in the stability and the good sense of the courts that administer justice in criminal cases.

It is not suggested that the learned magistrate was in any way unfair. There were thirty

A three accused persons and each probably was ready to pay a small fine and be on his way. It may well be that the learned magistrate thought such a course would be convenient to all including himself. Let me quote the classical words of Lord Hewart C.J. in *R. v. Sussex Justices, Ex parte McCarthy* ⁽¹⁾ that it is

B "of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done."

In another passage in the same case he said:

C "Nothing is to be done which creates even a suspicion that there has been an improper interference with the course of justice."

D In my opinion in this case a miscarriage of justice has manifestly been occasioned. It cannot be said that justice is manifestly and undoubtedly seen to be done when a magistrate compromised with accused persons to impose a certain small fine and return money found if accused persons agreed to plead guilty behind the back of the prosecuting officer. Accordingly the conviction and sentence must be quashed. Any fine if paid must be refunded forthwith. I order a new trial on the same charge before another magistrate.

E *New trial ordered.*

GOLDEN HOPE RUBBER ESTATE LTD. v. MUNIAMMAH & ORS.

[A.C.J. (Gill J.) September 12, 1964]

F [K.L. — Civil Appeal No. 10 of 1963]

Workmen's Compensation — Accident arising out of and in the course of employment — Meaning of "accident" — Death from disease accelerated by act of exertion in course of employment — Workmen's Compensation Ordinance, 1952, s. 4.

G This was an appeal against the award of compensation in respect of the death of a field worker employed by the appellants. The arbitrator under the Workmen's Compensation Ordinance found that the deceased was working with other labourers in cleaning a drain in the estate with a changkol and that after half an hour in the course of the work he suddenly collapsed and died. The medical evidence was that death was caused by heart failure and that the exertion of work had contributed to the death of the deceased. The arbitrator held that the death was an accident arising out of and in the course of the deceased's employment and he made an award of compensation in the sum of \$2,880. The appellants appealed against this award.

H Held: where the death of a person from disease is accelerated by some particular act of exertion, the death can properly be said to be caused by an accident and where the contributory cause is furnished by and in the course of an injured workman's employment, he is entitled to compensation under the Ordinance.

I Cases referred to:—

- (1) *Fenton v. Thorley & Co. Ltd.* [1903] A.C. 443
(2) *Stewart v. Wilsons & Clyde Coal Co. Ltd.* (1902) 5 Fraser 120.